

ADVISORY OPINION NO. 96-30

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON July 11, 1996

PUBLIC SERVANT SEEKING OPINION

A City Attorney

OPINION SOUGHT

Is it a violation of the Ethics Act for a member of a Town Council to also be employed by the Town as a police officer?

FACTS RELIED UPON BY THE COMMISSION

The Town has had problems retaining a police officer. The Town Council has elected to hire a council member to serve in that capacity. If this member is hired to serve as a police officer, he will not participate or vote on any matter, action or discussion by the Council regarding the police department.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-1-2(c) provides in pertinent part that...The Legislature finds that...local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

West Virginia Code 6B-2-5(b)(1) provides in pertinent part that... A public official or public employee may not knowingly and intentionally use his...office or the prestige of his...office for his...own private gain or that of another person...

ADVISORY OPINION

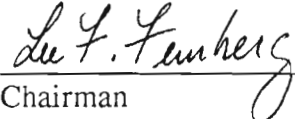
In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit a member of a Town Council from also serving as a police officer in the Town.

However, pursuant to WV Code 6B-2-5(b)(1), public officials may not use their office or its resulting prestige for personal private gain or for the private gain of another. Therefore, the requester may not use his position as a member of the Town Council to obtain or promote his interests as an employee of that Town.

Further, WV Code 6B-1-2(c) provides that a public official should seek to be recused from voting, deciding or otherwise acting on a matter that has become "personal" to him. The Commission previously defined "personal" as situations where a public official has any direct or indirect pecuniary interest in the matter, is affected in a manner which may influence his vote, or when voting would give the appearance of impropriety. The Commission has determined that in order for the public official's recusal to be effective he must physically remove himself from the room during the discussion and decision making process.

If the individual, as a member of the Town's Council, is called upon to consider employment matters or other issues which would directly affect his employment position as a city police officer, he should refrain from voting or taking other action regarding those matters since failure to do so would create the appearance of impropriety.

In Advisory Opinion #92-11, the Commission determined that the voting prohibition contained in WV Code 6B-1-2(c) does not apply to actions which involve the creation of laws, rules, regulations or policies which affect the public official's financial interest as a member of a class. There is no conflict of interest if the public official is not pecuniarily affected to a greater extent than any other member of the profession, occupation, group or class. See also the Commission's legislative rule on Voting, 158 C.S.R Series 9, §2.2. attached hereto. However, if the requester represents 25% or more of any profession, occupation, group or class affected by an issue before council he must refrain from voting.


Chairman